

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
LEIER,	14-cv-03121-PKC-PK
Plaintiff,	:
	:
- versus -	:
	U.S. Courthouse
	Brooklyn, New York
	:
LINCOLN LIMOUSINE LUXURY INC.	:
et al.,	:
Defendants	:
-----X	

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 THE CLERK: Civil Cause for Status Conference,
2 docket number 14-cv-3121, Leier v. Lincoln Limousine
3 Luxury Inc, et al.

4 Counsel, please state your name for the record,
5 starting with the plaintiff.

6 MR. LEON: Louis Leon from Borrelli &
7 Associates on behalf of the plaintiff.

8 Good morning, your Honor.

9 MR. FORMAN: Good morning, your Honor.

10 Arthur H. Forman for all the defendants.

11 THE COURT: So we're here for a status
12 conference and also there's a pending motion for
13 conditional certification. Let's start with the update
14 on where everybody is, as far as the status of the case.
15 The notes I have from the last conference dated September
16 25th indicated that that there was an issue at the
17 deposition of the plaintiff. So I wanted to see where
18 that is.

19 MR. LEON: Your Honor, my understanding from my
20 office, since I was recently put on this case is that my
21 office has made repeated attempts to reach out to Ms.
22 Leier, the plaintiff. I actually spoke with her about a
23 week and a half or two weeks ago and I asked her in
24 preparation for this conference, what her condition was
25 like, if she was ready to be deposed and she adamantly

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1 told me that she still was not fit to be deposed or to
2 basically sit around for many hours because she wasn't
3 sure about her physical condition.

4 And that according to her, her doctor did
5 substantiate that I asked her if we could speak again and
6 if she can get something in writing from her doctor. I
7 have not heard from her since. I was trying to do this
8 with enough time before the conference, so that we could
9 sort of have an answer for opposing counsel and for your
10 Honor.

11 THE COURT: Uh-huh.

12 MR. LEON: I was just speaking with opposing
13 counsel prior to the start of the conference and I
14 advised them that I am going to once again try again
15 today to speak with my client and tell her how important
16 it is for us to understand definitively what day she can
17 be deposed and explain to her that unless she is
18 bedridden and cannot get up that she has to be deposed in
19 this case.

20 THE COURT: Uh-huh.

21 MR. LEON: And if any accommodations are
22 necessary, that we should also do that.

23 THE COURT: What is her condition? Is she able
24 to move around?

25 MR. LEON: Right now, honestly, your Honor, I

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1 don't know currently what her condition is after the
2 surgery that she had. All I know is that she explained
3 to me that she was having -- it was a very quick phone
4 call. She told me she couldn't speak for very long but
5 that she just wasn't physically able to get up and go and
6 be deposed. That was my understanding from the
7 conversation. I would like a chance to clarify with her
8 and get an accurate update, so that I am not
9 misrepresenting her condition to the Court.

10 THE COURT: Yes. Okay. Well, that would be
11 useful because obviously if there are accommodations that
12 can be made to depose her in a timely manner, I'm sure
13 opposing counsel would be able to -- will be amenable to
14 that, as long as we know specifically what the problems
15 are.

16 MR. LEON: Correct.

17 THE COURT: Right. Okay.

18 MR. LEON: And I may be mistaken, but I believe
19 there was an individual that I didn't depose, but someone
20 from my office deposed, a Mr. Korban.

21 MR. FORMAN: Yes, he was deposed.

22 MR. LEON: I don't know previous conversations
23 that the prior attorney might have had with opposing
24 counsel but it is my understanding that my firm may have
25 articulated to opposing counsel that we still wanted to

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1 have another opportunity to depose Mr. Korban because
2 during his last deposition, he stated sort of an
3 inability to recall things or was having issues giving, I
4 don't want to say truthful statements, but accurate
5 statements to the questions being asked.

6 So in addition to plaintiff having to be
7 deposed, we would like to revisit the conversation of
8 having Mr. Korban redposed, maybe for the full seven
9 hours but at least for a specific time period to see if
10 his memory is better or if he's feeling better that day
11 and he can actually answer the questions being asked.

12 THE COURT: Mr. Forman?

13 MR. FORMAN: Your Honor, I believe he was
14 already deposed for more than seven hours.

15 THE COURT: Uh-huh.

16 MR. FORMAN: And I believe the other -- the
17 owner was deposed twice for way more than seven hours,
18 more like fourteen hours.

19 MR. LEON: But just to be clear, the owner that
20 you spoke about, that was pursuant to a (30(b)(6) and an
21 individual deposition, correct?

22 MR. FORMAN: Uhm.

23 MR. LEON: Because that was my understanding.

24 MR. FORMAN: No, Mohamed Almogazi. He's a
25 named defendant.

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1 THE COURT: So, Mr. Korban is who?

2 MR. LEON: He was one of the company's
3 witnesses, someone that would have information regarding
4 the facts of this case. I am happy to have this
5 discussion with opposing -- this is the first time we're
6 meeting and having a conversation. So I would endeavor
7 after this conference or subsequently during the course
8 of this week to finalize any scheduling of depositions or
9 any subsequent conversations regarding that but I did
10 want to put on the record that we do intend or at this
11 time intend to have another deposition of Mr. Korban. If
12 some reason that's not feasible or it's something that's
13 not going to happen, then I would say opposing counsel
14 and I can discuss it and finalize that situation.

15 THE COURT: What is the name of that person,
16 Koblan (sic).

17 MR. LEON: K-O-B-L-A-N (sic), I forgot his
18 first name.

19 THE COURT: Koblan, okay.

20 MR. FORMAN: Yeah, Ahmed Korban, K-O-R-B-A-N.

21 MR. LEON: OH, excuse me.

22 MR. FORMAN: Ahmed.

23 THE COURT: And Mr. Forman, are you opposing
24 that or --

25 MR. FORMAN: Yes.

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1 THE COURT: Yes. Okay. So --

2 MR. FORMAN: Your Honor, this is an employee
3 who was a limousine driver for four months and there's
4 been over twenty hours of depositions of my clients and
5 she has not -- after two years of bringing this lawsuit,
6 she has not appeared for a deposition.

7 THE COURT: Uh-huh.

8 MR. FORMAN: Yes, we're going to oppose it for
9 a four-month employee, seeking overtime wages.

10 THE COURT: But I am just focusing on Mr.
11 Korban. Is he an employee?

12 MR. FORMAN: I believe he was the owner.

13 THE COURT: He's the owner. Okay. Mr. Leon,
14 what you're saying is just that he didn't recall things
15 at the first deposition. You want to re --

16 MR. LEON: Yes, my --

17 THE COURT: -- depose him to see if he recalls
18 better now?

19 MR. LEON: My understanding is that during the
20 second deposition of Mr. Korban, he repeatedly stated,
21 and I may be just paraphrasing at this point but that
22 something was impeding him from remembering, that he
23 wasn't -- something to the effect of not feeling well and
24 not being really able to ascertain the questions or give
25 a full, accurate response.

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1 I would like to revisit that conversation with
2 opposing counsel before stating any objections or
3 consenting to anything. I would like to have an
4 opportunity to speak with opposing counsel regarding this
5 point and see that if we can agree on our own whether or
6 not we will proceed with Mr. Korban's deposition or not.

7 But first and foremost regarding plaintiff to
8 opposing counsel's point, I will endeavor this week to
9 get a definitive answer from her because I agree, it's
10 been a few months since the last conference and I
11 definitely want to alert the Court, as well as opposing
12 counsel as to her availability.

13 THE COURT: So, Mr. Forman, do you want to have
14 the conversation about redepositing Mr. Korban or do you
15 want me to make a decision now?

16 MR. FORMAN: Uhm.

17 THE COURT: I mean, I will give you the
18 opportunity to have the discussion if you wish, but if
19 you already know your position and want to argue it --

20 MR. FORMAN: That's my position that he
21 answered their question and I believe the questions were
22 objected to and they involve a prior criminal offense,
23 his prior criminal record and the attorney, who was a
24 different attorney at the time, and he objected to that
25 as irrelevant.

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1 THE COURT: But was there testimony to the
2 effect that he wasn't feeling well that day, such that a
3 second deposition -- in a second deposition, he might be
4 able to answer those questions?

5 MR. FORMAN: I don't believe so, no.

6 THE COURT: All right. Do you have the
7 specific passages where he said he wasn't feeling well
8 that day?

9 MR. LEON: Unfortunately, I don't have the case
10 file with me here today. But like I said, I mean, part
11 of the reason I would like to revisit this conversation
12 with opposing counsel prior to any official decision, so
13 that we can discuss and if I point to something to him
14 and say well this particular question I thought was
15 something that he should have been able to answer to and
16 the question that was important or relevant or whatever
17 you want to call it, that we can decide whether or not we
18 agree on the validity of that objection.

19 THE COURT: So if -- I am going to make a
20 preliminary ruling for you, Mr. Leon, because I don't
21 want you to engage in unnecessary motion practice.

22 MR. LEON: Right.

23 THE COURT: But if you're just trying to
24 revisit this witness because he didn't recall, I'm not
25 going to allow that. But if there are specific -- there

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1 were specific conditions that he alluded to that day
2 which it's possible that he no longer has that position
3 -- that condition, if he wasn't feeling well that day and
4 therefore couldn't remember but now a second day, he
5 might feel better. Then I'll permit some questioning on
6 that. You can talk to Mr. Forman about making the
7 arrangements.

8 But if you can't talk to any specific
9 information where he had a condition that's likely to be
10 different at another deposition, then I am going to deny
11 that.

12 MR. LEON: Yes, your Honor.

13 THE COURT: Because I don't think you should
14 get a second bite at the apple.

15 MR. LEON: Sure. Your Honor, how do you
16 suggest we follow-up --

17 THE COURT: Well, if you can point to specific
18 -- the burden's on you. If you can point to something
19 specific, then you can share that with Mr. Foreman and
20 you can try to work that out but if you can't point to
21 anything specific, then I would advise that you not
22 bother coming back to me.

23 MR. LEON: Sure, sure.

24 THE COURT: Yea.

25 MR. LEON: But just to be clear, assuming you

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1 make a preliminary decision here and then we discuss it
2 and say I can point to certain provisions or certain
3 parts where he didn't recall -- not recall, but didn't
4 feel well enough to respond to that question at that time
5 and we disagree, is this something that I should file a
6 letter with you or is this something --

7 THE COURT: Yea, then it would be a motion to
8 compel --

9 MR. LEON: Okay.

10 THE COURT: -- based on that but like I said,
11 you need to be very clear that it's something that's
12 likely to be different at that next -- at the deposition
13 you're requesting and not just an exploration of maybe
14 he'll remember better today, which is usually not the
15 case.

16 MR. LEON: Understood, your Honor.

17 THE COURT: All right. So are there any other
18 discovery -- and then as far as your client, I am going
19 to give you a deadline --

20 MR. LEON: Sure.

21 THE COURT: -- to give specific information and
22 -- to her deposition because she's the one who brought
23 the case, so she's got to make herself available. So I
24 would like you to provide information by December 15th.
25 I'll give you two weeks to provide specific information

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1 and dates when she can be available but let me put it
2 this way, provide dates when she can be available or
3 specific information as to her medical condition and why
4 she's not available. And a date when she's likely to be
5 available.

6 MR. LEON: Yes, your Honor.

7 THE COURT: And if there accommodations that
8 need to be made, location, timing, that kind of thing,
9 you should provide that, as well. Okay.

10 And otherwise, is discovery complete except for
11 these deposition issues?

12 MR. LEON: Yes, your Honor.

13 MR. FORMAN: Yes, your Honor. All documents
14 were (indiscernible).

15 THE COURT: Okay, great. So let's turn now to
16 the motion for conditional certification. Mr. Leon,
17 plaintiff brought this motion, so why don't you start?

18 MR. LEON: Yes, your Honor. I apologize, your
19 Honor. I wasn't aware that we were going to discuss the
20 particulars of the motion --

21 THE COURT: Okay.

22 MR. LEON: -- today during the status
23 conference. I guess --

24 THE COURT: You filed the motion or your
25 predecessor counsel filed the motion in July.

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1 MR. LEON: Correct, your Honor. My
2 understanding is that discovery deadlines had been put on
3 some sort of hold pending a decision on this motion for
4 conditional class certification.

5 THE COURT: Yes, and that's why I want to deal
6 with that motion.

7 MR. LEON: Okay.

8 THE COURT: Okay. So you're not prepared?

9 MR. LEON: If you could just give me a few
10 minutes just to review something and I apologize about
11 this, your Honor.

12 THE COURT: Okay. Mr. Forman, are you prepared
13 to go forward on this?

14 MR. FORMAN: Yes, your Honor.

15 THE COURT: Okay.

16 MR. FORMAN: It's our contention that there's
17 no supporting affidavit that would support a motion for
18 conditional certification, although the bar is very low,
19 not even that has been met.

20 This is an employee who worked for four months.
21 She has not named any other employees who have been paid
22 similar to her. There are no names in her affidavit.
23 She just says all the other drivers were the same as her.
24 There's also the discrepancy as to how she was paid. In
25 her complaint, she claims that she was paid, I believe

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1 \$6.30 an hour, \$6.25 an hour and now in her affidavit in
2 support of the motion, she's changing that and she said
3 that she was paid on a commission basis. And so she says
4 all the drivers were paid on a commission basis like her
5 but she doesn't mention any drivers who actually worked
6 overtime. This is an overtime case. This is not a
7 minimum wage case. And so, even if the other drivers
8 were paid on a commission basis as her, we don't know and
9 she doesn't allege that they worked more than forty-hours
10 a week to be entitled to overtime.

11 THE COURT: So is the standard that she has to
12 name other similarly situated individuals?

13 MR. FORMAN: The standard is a moving target
14 but there is a minimum and in the Eastern District, you
15 do have to at least allege that there are similar
16 employees who obviously worked overtime and weren't paid
17 for it. Just that their allegation that, oh, I know
18 about it, I know that everybody was paid the same as me.
19 She doesn't say how she knows it and she doesn't say who
20 these people are. At least I've seen affidavits where
21 they say Jose, a first name and not a last name.

22 THE COURT: Right. But isn't -- I mean, the
23 spirit of the FLSA is such that individual employees may
24 not know who the other employees are, right?

25 MR. FORMAN: But they have to at least know

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1 that there was a similar practice and policy that was
2 companywide.

3 THE COURT: Uh-huh. Is the burden on the
4 plaintiff to discern the policy or can that be discerned
5 from the defendant?

6 MR. FORMAN: The burden on the plaintiff is to
7 come forward at least with a minimum allegation that
8 there is a common policy involving overtime and not
9 paying a premium rate for those hours.

10 THE COURT: Uh-huh.

11 MR. FORMAN: She doesn't allege that any other
12 employees did work more than forty hours. She attaches
13 pages from the deposition -- the transcript of the
14 deposition of Ahmed Korban and the pages that have been
15 put in support of the motion state that he used his own
16 limousine. He worked for other companies at the same
17 time that he worked for this company and it does not say
18 that he worked more than forty hours a week.

19 THE COURT: But is there information that's let
20 say, counsel have been able to discern to date that there
21 was, in fact, a policy that would -- a policy or practice
22 that would affect other employees, other potential
23 members of this class.

24 MR. FORMAN: What I argue in my memo is that
25 the plaintiff herself has alleged two policies.

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1 THE COURT: Uh-huh.

2 MR. FORMAN: One that she was paid an hourly
3 rate and when she worked over forty hours, she wasn't
4 paid anything and then in her affidavit she says that she
5 was paid on a commission basis, not an hourly rate.

6 THE COURT: Uh-huh.

7 MR. FORMAN: And so if she can't tell the Court
8 how she was paid, how can she say that there was a common
9 policy when there's two ways that she might have been
10 paid. So some drivers might have been paid hourly. Some
11 drivers might have been paid on a commission basis. And
12 the problem with that is that the Motor Carrier Act
13 exempts drivers who transport passengers for money across
14 state lines and there's no dispute that many of her trips
15 were from Manhattan to Newark Airport. All the limo
16 drivers do a lot of pickups in Newark Airport. Those
17 limo drivers we'll be arguing are exempt from the
18 overtime requirements.

19 THE COURT: Yea, but just because some drivers
20 may be exempt --

21 MR. FORMAN: Uh-huh.

22 THE COURT: -- doesn't preclude a class
23 certification at this point, especially since it's
24 conditional, so that we can ascertain whether there are
25 in fact other similarly situated employees.

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1 MR. FORMAN: Well, those employees who are
2 exempt would be paid one way and the employees who aren't
3 would be paid another way.

4 THE COURT: Uh-huh.

5 MR. FORMAN: So if we get, you know -- if they
6 have 100 drivers, now the Court has to decide which
7 drivers are picking up passengers at Newark Airport and
8 which passengers -- which drivers aren't. So it becomes
9 an individualized assessment of a large group of class
10 members.

11 THE COURT: Right, but that's part of what the
12 Court should be doing to draw the line as to who is in
13 the class and who is outside the class. You know, what
14 that class consists of. So is your argument that we
15 shouldn't doing a conditional certification of the class
16 because you don't know on what basis the other employees
17 may be similarly situated because the plaintiff has
18 alleged two different bases? Is that the basis?

19 MR. FORMAN: Yes, that there is not even an
20 allegation that other drivers were paid similar to her
21 when she hasn't even said -- and she's alleged two ways
22 that she was paid.

23 THE COURT: Well, but I mean that's two
24 different things you're saying there. One is that she
25 hasn't alleged that there are people who are similarly

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1 situated which I don't -- I mean, if she's asking for
2 class certification, she's in fact alleging that. And
3 the other one is that she's alleged two things that are
4 in conflict. So she needs to decide which one it is.

5 MR. FORMAN: My main point is that it's even
6 below the minimum standard just to say that I wasn't paid
7 for overtime, the same as everybody else. That's
8 basically all she said and the prior counsel even
9 submitted a reply memorandum without clarifying that
10 point.

11 THE COURT: Uh-huh.

12 MR. FORMAN: So we just have one small
13 affidavit, a two-page affidavit from the plaintiff.

14 THE COURT: Okay.

15 MR. LEON: Your Honor?

16 THE COURT: Yes, Mr. Leon?

17 MR. LEON: If I may? What opposing counsel is
18 pointing to seem to be more questions relating whether or
19 not we in fact certify the class.

20 THE COURT: Uh-huh.

21 MR. LEON: Right now as your Honor was stating,
22 this is a conditional certification. If opposing counsel
23 has any issues as to inconsistencies or finds at the end
24 of the day we can't point to anyone or we can't actually
25 pinpoint any individuals, then it seems like that's an

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1 argument to be made at that time.

2 Right now the whole process, the whole point of
3 this motion and trying to ascertain who they are is
4 Because as your Honor stated, most plaintiffs or most
5 employees won't necessarily have that information with
6 people who formerly worked there or people who worked
7 there who may or may not have paid in that forum.

8 The objective and the mind set behind this
9 motion is to truly understand the parameters. Right now
10 we're simply opening the door to see who is actually
11 inside, who is involved in this. If opposing counsel
12 says there's inconsistencies, we would disagree obviously
13 but that wouldn't take away that there might be other
14 similarly situated people who were commission-based,
15 who were hourly based and who were not paid for overtime
16 that they were entitled to under FLSA, if that's what
17 proven.

18 In fact, right now, we're simply having a
19 discussion of who is involved and many times, it's the
20 employer who has all this information. And the purpose
21 behind circulating of notice to individuals is to find
22 out who are these people, what was their situation. Were
23 they, in fact, paid overtime? Were they not? How were
24 they paid? Was it hourly, commission or not?

25 The standard, as opposing counsel says, is low

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1 but we would wholeheartedly disagree that we have not
2 done the bare minimum. As your Honor stated, by simply
3 filing a motion on behalf of similarly situated people,
4 by definition, we are making the allegation that those
5 individuals were suffering of a particular practice of
6 not being paid overtime. And it is defendant's burden
7 and duty at a later time to disprove whether or not these
8 individuals constitute a class and whether or not they
9 were similarly affected.

10 THE COURT: So how would you define similarly
11 situated for purposes of the class?

12 MR. LEON: For purposes of this class, it would
13 include things like individual who had similar job
14 responsibilities, a similar job title, was not paid
15 overtime for hours worked over forty at time and a half.
16 It could be other individuals that suffer those same
17 consequences.

18 If it was proven that there was a companywide
19 practice of just not paying employees overtime, then
20 these individuals would all be interconnected in that
21 fashion.

22 THE COURT: Were you able to ascertain in your
23 discovery whether there was, in fact, a companywide
24 policy?

25 MR. LEON: We would say that there was a -- at

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1 this time, based on what I recall looking at, that if not
2 a formal policy of not paying these individuals overtime,
3 this sort of informal policy, this unspoken policy that
4 these individuals will not be paid or are not paid for
5 the overtime that they're entitled to at the rate that
6 the law designates.

7 THE COURT: Is one of the allegations that
8 these individuals were wrongly classified as independent
9 contractors? Or is it just that they were employees who
10 were not paid overtime?

11 MR. LEON: It is my understanding that it's
12 employees who were not paid for the overtime that the
13 FLSA sates.

14 THE COURT: Okay. So what is your factual
15 basis? You have to make a modest but factual basis.

16 MR. LEON: Right. In terms of the motion that
17 we submitted and pursuant to our plaintiff's allegations,
18 as an employee who worked there, although only for four
19 months, as opposing counsel points out, this is a person
20 who while she may not know the name of each and every
21 person who were not paid overtime, employees talk. They
22 have discussions about how they're paid, how they're not
23 paid. Even if she doesn't talk to every single person,
24 there's going to be other who do similar jobs to her, or
25 people who are out and as she knows, employees talk and

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1 she receives information from other employees stating,
2 you know, this is what we're paid. This is how we're
3 paid. It's the understanding among the other employees.
4 So the understanding is if all these individuals who
5 worked here continuously for this time period were not
6 paid overtime, then there's a likelihood and the purpose
7 behind the motion for class certification, that other
8 people who came before them, as well as people who came
9 after them, were being paid in the same shape -- in the
10 same way or not paid in the same way.

11 THE COURT: All right. Mr. Forman, do you want
12 to respond to that?

13 MR. FORMAN: I --

14 THE COURT: That the contention that there is a
15 similarly situated class of individuals who are not paid
16 overtime based on the company practice

17 MR. FORMAN: And in this case, the plaintiff
18 hasn't even alleged that she had conversations with other
19 employees, that would have explained something but she
20 only worked there for four months. She works in her own
21 car. I'm not sure where she would have talked to other
22 employees.

23 THE COURT: Well, let me ask you, was there a
24 company policy of or is something that has been disclosed
25 in discovery to that effect?

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1 MR. FORMAN: I haven't seen it. That each
2 employee is treated to according to whether they drive a
3 six-passenger limo, they are not exempt from overtime.
4 They drive more than eight passengers and there's a
5 fourteen-passenger limo, and there's a ten-passenger limo
6 and they are exempt from overtime.

7 MR. LEON: Just on that point, I mean I know we
8 may disagree on this point but just by that very
9 description of particular individuals are paid in
10 particular ways pursuant to whatever type of car they
11 have, implicates that there is a policy to pay them in
12 some shape or form. Now if we want to disagree whether
13 they were misclassified, whether they're exempt, whether
14 they should be paid overtime, that's a different story
15 but in effect, that's a policy. That's a procedure of
16 how each particular person is paid or not paid.

17 THE COURT: So was plaintiff the only person
18 who was not exempt? Was the only person who was -- okay,
19 let me rephrase it. Would there have been other drivers
20 who were driving fewer than six passengers?

21 MR. FORMAN: Well, if I have to let the cat out
22 of the bag, my clients allege that she drove a ten-
23 passenger limo. She did not drive a six-passenger limo
24 and we have proof of it. We would love to depose her
25 about her allegation that she only drove a six-passenger

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1 limo.

2 THE COURT: Uh-huh.

3 MR. FORMAN: I will be making a motion for
4 summary judgment if I can get a hold of her and get her
5 testimony, unless there's a question of fact, then we'll
6 be happy to do that.

7 THE COURT: Right. Okay. So perhaps the
8 problem we're running into is that the plaintiff has not
9 been deposed, so we don't have a factual basis for --
10 what you're alleging is there's no factual basis because
11 you haven't had a chance to find out from her what her
12 situation was, so that we can define what similarly
13 situated looks like.

14 MR. FORMAN: Your Honor --

15 THE COURT: Is that --

16 MR. FORMAN: -- with all due respect, these
17 motions are usually brought prior to any discovery --

18 THE COURT: Right.

19 MR. FORMAN: -- for the reason that the bar to
20 have a collective action is so low.

21 THE COURT: Okay.

22 MR. FORMAN: So I don't think deposing the
23 client will -- other than -- she could submit her
24 affidavit. If she hasn't submitted an affidavit that
25 would support a motion for collective action, I don't

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1 think a deposition would.

2 THE COURT: Has she submitted any affidavits in
3 this case?

4 MR. LEON: I believe there may have been --
5 well an affidavit in support of or in reply in the motion
6 for conditional class certification but aside from that,
7 no.

8 THE COURT: All right.

9 MR. LEON: But I would agree with opposing
10 counsel that typically these motions are done prior to
11 deposition testimony. I myself have different case in
12 which I'm also working on one with nothing and I would
13 once agree with the burden being low. And again, the
14 point of this notice, the point of trying to proceed and
15 get this class conditionally certified is to find out is
16 there a class. And that's what we're trying to do right
17 now.

18 Right now, plaintiff's argument doesn't have to
19 be and isn't, this is what it is. It's let's explore
20 this. We have a basis for exploring it. We have a basis
21 for believing that other individuals who are similarly
22 situated weren't paid this and we would like the chance
23 to explore it, get their names, names of people who were
24 drivers of whatever types of cars, find out how they were
25 paid, were they paid in conformance to the policy,

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1 whether informal or formal.

2 THE COURT: Okay.

3 MR. LEON: That's what we're trying to do.

4 THE COURT: Well, the thing that's somewhat
5 troubling to me is I am not clear on what that class
6 looks like, given the dispute, somewhat unresolved
7 dispute about what her situation was. And in the absence
8 of an affidavit as to what her situation actually was, I
9 don't know that we can say what is similar.

10 MR. LEON: An affidavit separate from what may
11 have been provided with the motion? Just for me --

12 THE COURT: As far as what, I mean I think it's
13 what Mr. Forman raised. It's like what exactly was she
14 driving. You know, what was her situation? Was she --
15 what were her job responsibilities.

16 MR. LEON: I'm sorry.

17 THE COURT: Yea, so --

18 MR. LEON: I believe -- and again, I don't have
19 the document in front of me but I believe the complaint
20 very specifically outlines what types of car she drove,
21 when, her job responsibilities and such. So there isn't
22 this sort of absence of factual allegation regarding what
23 her responsibilities were and pursuant to those
24 allegations, factual allegations regarding her job
25 responsibilities, her duties, what type of car she drove,

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1 the motion was also drafted and filed in conformance to
2 that, not deviating from that complaint.

3 THE COURT: So the class that you're asking to
4 have certified would consist of tell me.

5 MR. LEON: The individuals who drive these
6 different cars as Ms. -- my understanding, and again if
7 your Honor would give me an opportunity to be able to
8 access something through my phone, so I can check it -- I
9 can look at it and give you a better idea --

10 THE COURT: Okay.

11 MR. LEON: -- it's all these individuals
12 working for the company who were not paid overtime, who
13 drove these different cars and according to company
14 policy, were not entitled to overtime and therefore not
15 paid for it.

16 THE COURT: Right.

17 MR. LEON: If we want to have a -- sort of a
18 disagreement or debate as to what individuals were
19 exempt, obviously we're willing to engage in that at the
20 point in time when it comes to actually certify the
21 class.

22 THE COURT: All right. so let me give you a
23 moment to check your phone and get the information that
24 you said you wanted.

25 MR. FORMAN: Your Honor?

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1 THE COURT: Yes, Mr. Forman?

2 MR. FORMAN: In the meantime, your Honor, I
3 would point out paragraph 49 of the complaint lists the
4 vehicles she drove. And then paragraph 2 of her
5 supporting declaration which is Exhibit 4 to the motion
6 or paragraph 2, she says which car she drove, and they're
7 both very vague.

8 THE COURT: Well, I'm looking at paragraph 49
9 of the complaint and it says --

10 MR. FORMAN: Okay.

11 THE COURT: -- she drove town cars on a
12 substantial portion of her routes and also frequently
13 drove five-passenger minivan or six-passenger SUV or six-
14 passenger limousine.

15 MR. FORMAN: Right.

16 THE COURT: So that's pretty clear. What's the
17 vague part?

18 MR. FORMAN: Her affidavit.

19 THE COURT: What does that say?

20 MR. FORMAN: "I drove a number of different
21 vehicles. I drove defendant's four-door town cars on a
22 substantial portion of my routes." So she doesn't
23 mention four-doors --

24 THE COURT: Well --

25 MR. FORMAN: I guess that's what she means by

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1 town car.

2 THE COURT: Yea. So that seems consistent.

3 One is more detailed than the other but I don't see an
4 inconsistency there. So -- okay.

5 Mr. Leon, did you get what you needed?

6 MR. LEON: What I was looking at was just
7 basically -- I was trying to look for the complaint. I
8 was looking at the allegation regarding this -- I recall
9 that it had specifications and I agree, while the motion
10 may itself, the affidavit in support may have slightly
11 less details, it's still not inconsistent with that
12 complaint.

13 THE COURT: Right. Okay. All right. So I
14 think that the standard -- everyone agrees the standard
15 is low. It's a modest factual basis. And I think in
16 this case that there is -- that standard has been met,
17 especially at this stage. It's a two-step process. This
18 is step one and there's a factual basis such that I will
19 allow the certification --

20 MR. LEON: Thank you, your Honor.

21 THE COURT: -- the conditional certification to
22 go forward. As far as the notice, I've read the
23 arguments about how far back the notice should go. I
24 think it should go back from today -- three years from
25 today, rather than three years from the complaint.

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1 And as far as the method of the notification, I
2 would like to hear on that point. The request is that
3 there be notices be sent in Spanish and Arabic, in
4 addition to English. What's the basis for that?

5 MR. LEON: Well, our under --

6 THE COURT: Why those particular languages?

7 MR. LEON: Our understanding from discussing
8 this with our client is that the different employees who
9 may be affected by this, these are the common languages
10 that they speak and unfortunately, not in cases -- not
11 in this particular case but we've run into other cases in
12 which when you send in only one language, unfortunately
13 someone who speaks, say it's only English, you send it
14 only in English, people who are Spanish-speakers or
15 Arabic-speakers or any other, don't understand it and it
16 sort of defeats the purpose of sending it in one language
17 and sending them this great opportunity for them to
18 vindicate their rights but they just can't understand it.

19 So we want to maximize all employees who were
20 affected whose first language may not be English, that
21 they may actually read it and understand what's happening
22 because sometimes as simple as these notices can be, it
23 can be confusing even to someone whose native language is
24 English and reads the notice in English.

25 So we just want to make sure that all employees

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1 who have worked for the company and are to receive a
2 notice, fully understand what that notice is before them
3 because our understanding is that not all of them have
4 English as their first language. It's Spanish, Arabic
5 and the other one is, your Honor --

6 THE COURT: And so plaintiff would make those
7 translations?

8 MR. LEON: That would be something that I was
9 prepared to discuss with opposing counsel about who would
10 do that or to what degree would we confer on the language
11 itself. Ultimately, if it comes down to it, yes, we
12 would get that translated.

13 THE COURT: And what do you propose as the
14 method of getting the notices out?

15 MR. LEON: Well, I can that for -- I know it's
16 very common that, for example, in certain Spanish
17 newspapers, notices be put because that's -- certain
18 newspapers here in the States for Spanish-American
19 residents or just people of Latino descent, they
20 primarily will respond to seeing something in the
21 newspaper saying here's your notice.

22 I would just like that confirm that -- I just
23 want to confirm that that is something that our client,
24 as well as our firm, believes is the most effective way.
25 If your Honor wouldn't mind that -- I could just finalize

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1 that. I just want to make absolutely sure the method in
2 which we will circulate that notice.

3 THE COURT: Okay. So if that's the method,
4 then we don't need to have the addresses or -- or you
5 could have a last known address. Well, let me hear you,
6 Mr. Forman, from the papers there was an objection to the
7 specific information being sought --

8 MR. FORMAN: Yes, your Honor.

9 THE COURT: -- the potential members of the
10 class.

11 MR. FORMAN: The plaintiff speaks Portuguese.
12 She doesn't speak Arabic. She doesn't speak Spanish.

13 THE COURT: Uh-huh.

14 MR. FORMAN: There's no proof that anybody
15 speaks Spanish. My clients are -- speak English. I
16 mean, everybody speaks -- this is not a restaurant with
17 cooks and people who don't meet the public, busboys who
18 only speak Spanish. These are professional limousine
19 drivers. They have to take their driving test in
20 English. They have to speak to customers in English.
21 They don't operate at work in Spanish. They have to read
22 traffic signs.

23 MR. LEON: If I may?

24 THE COURT: Okay, wait. Hold on a second. So
25 then as to the point where there was an objection on

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1 specific information, you had -- I believe that the
2 defendant's position was that they could provide the
3 names and last known address but not telephone numbers or
4 other things.

5 MR. FORMAN: Yes, your Honor, we might be able
6 to provide the other information if the letters are
7 returned as undeliverable.

8 THE COURT: All right. Yes, on the language
9 part --

10 MR. LEON: Yes.

11 THE COURT: -- and then on the addresses.

12 MR. LEON: On the language portion, just
13 because -- and I understand that limousine drivers would
14 have to be able to read the traffic signs and take a test
15 in English but that is completely different. Reading a
16 stop sign with red in big letters is different than
17 reading a notice that's coming pursuant to a court order,
18 letting them know of their rights.

19 And as I was stating before, I would say this,
20 if I wasn't a lawyer and I received a notice in a case
21 like this, I wouldn't be 100 percent sure what it is in
22 and of itself. It's difficult enough to digest, let
23 alone if it's not in your native language.

24 THE COURT: But why Spanish and Arabic if your
25 client speaks Portugese?

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1 MR. LEON: Well, just to be clear, just Because
2 our client only speaks Portugese or not the other
3 languages that we're asking for, doesn't mean all these
4 other employees. Our understanding pursuant to
5 conversations with our client and her understanding of
6 her coworkers dynamic, the people who were speaking, that
7 -- what their languages are, what their native languages
8 are. And we want to ensure, just Because opposing
9 counsel says there's no proof that other people speak
10 these languages, well that was first and foremost, that's
11 why we also want to get the names of these individuals
12 and their full contact info, so we can identify them
13 completely but our understanding is in speaking with our
14 client, is that her coworkers aren't just native English
15 speakers.

16 THE COURT: I understand that point but I am
17 still puzzled as to why you picked those languages.

18 MR. LEON: Because her understanding is that
19 other employees, these are their native languages.
20 That's why, these specific languages. It wasn't an
21 arbitrary choice. It was -- our understanding in
22 speaking with our client is that her coworkers or people
23 that she's known that's worked there, these are the
24 different languages that they speak. And just to be
25 clear, as a native language.

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1 THE COURT: All right.

2 MR. FORMAN: Your Honor, she only worked there
3 four months.

4 THE COURT: Yes.

5 MR. FORMAN: So they're asking for information
6 going back three years.

7 THE COURT: Right.

8 MR. FORMAN: She has no idea what -- the
9 language they speak. My clients speak English because
10 that's the language that -- nobody speaks Arabic. They
11 speak English to everybody.

12 THE COURT: It --

13 MR. FORMAN: They don't speak Portuguese. They
14 don't speak Spanish.

15 THE COURT: Okay. So just to be clear, these
16 are the -- Spanish and Arabic are the two languages
17 you're requesting. It's not that you're going to then
18 later on come back and ask for Bengali and Chinese.

19 MR. LEON: No, your Honor. We have no reason
20 to believe that it's any other language than the ones
21 that we set forth in the motion. There's no reason.

22 THE COURT: Okay. And is there any reason for
23 you to need anything other than the names and last known
24 addresses of people who worked there three years to the
25 present?

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1 MR. LEON: Is there any reason to have anything
2 else, such as --

3 THE COURT: Anything other than those?

4 MR. LEON: -- the phone numbers?

5 THE COURT: Correct.

6 MR. LEON: Well, in the event that we cannot
7 reach someone through an address -- I mean, we just want
8 to have a complete and accurate contact information for
9 these individuals.

10 THE COURT: Okay.

11 MR. LEON: And if we're getting this
12 information, name, address, all that, the phone number
13 might as well go in with it. I mean it's --

14 THE COURT: Well, the might as well is not
15 really a compelling argument.

16 MR. LEON: I understand, your Honor. We just
17 want to make sure that we have the full, accurate contact
18 information for each one of these potential individuals.

19 THE COURT: But you've already stated that the
20 notice is meant to go out through newspapers.

21 MR. LEON: Well, no, what I said was that
22 specifically regarding Spanish-speakers, that -- I said
23 that in the past, things that we've done is circulate
24 notices to newspapers and what I was saying was that I
25 was that I wasn't 100 percent positive that was something

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1 we wanted to do but I just wanted to throw that out as an
2 option, at least regarding the Spanish-speakers. But
3 perhaps it's better to do just one universal one
4 consistent approach for all the different language
5 speakers.

6 So if your Honor is amenable to this, I would
7 like to simply confirm the manner in which we will
8 circulate the notice. That's what I would like to do.

9 THE COURT: So I will allow the notices to go
10 out in Spanish and Arabic but that translation -- the
11 cost of the translation will be on the plaintiff. And
12 also, I will ask the defendant to provide the names and
13 last known addresses but not telephone numbers or any
14 other identification. Okay.

15 And if you want to put the notice in the -- is
16 there any objection to their putting this in a newspaper?

17 MR. FORMAN: Yes, your Honor. There's no
18 evidence that anybody speaks Spanish in this company.

19 THE COURT: I understand.

20 MR. FORMAN: The plaintiff speaks Portuguese.

21 THE COURT: I understand but if the cost is
22 being bore by the plaintiff, what is your objection?

23 MR. FORMAN: You're inviting people to make
24 unfounded allegations.

25 THE COURT: But the people who are going to be

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1 receiving the notice are the former employees.

2 MR. FORMAN: Not once it gets into a Spanish
3 newspaper.

4 THE COURT: Okay, so you're objecting to the
5 newspaper.

6 MR. FORMAN: Yes.

7 THE COURT: Okay. So let me then be clear that
8 the notices will just go out to the names and last known
9 addresses of the employees for the three years preceding
10 today.

11 MR. LEON: Okay.

12 THE COURT: The names and addresses will be
13 provided by the defendant. No notice in the newspaper.

14 MR. LEON: Okay.

15 THE COURT: Okay. so is that clear? Any
16 questions about that?

17 MR. FORMAN: That's all limo drivers?

18 THE COURT: Yes. Right? The limo drivers, all
19 limo drivers --

20 MR. LEON: Yes.

21 THE COURT: -- is that the list? All right.
22 Great. So I will memorialize that. Do we have a date
23 for the next conference? We have the December 15th
24 deadline as far as the plaintiff's deposition
25 information. Let me see.

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1 Oh, yes, for the notice, how long will the opt-
2 in period be? Proposals? How long? Do you need thirty
3 days?

4 MR. LEON: I was thinking more along the lines
5 of forty-five days if your Honor would be okay with that.

6 THE COURT: Okay. Mr. Forman, do you have a
7 position on the --

8 MR. FORMAN: Forty-five --

9 THE COURT: Forty-five -- all right.

10 MR. FORMAN: -- days is routine.

11 THE COURT: And how soon can you get the
12 notice?

13 MR. LEON: I would endeavor within the week.

14 THE COURT: Okay. So let's get the notice out
15 by --

16 MR. FORMAN: Your Honor, I think I'll need two
17 weeks to get those names.

18 THE COURT: Okay. So let's do this then, a
19 week for the notice to be finalized, December 8th. Two
20 weeks to get the names of the potential class members.
21 So that's December 15th. And then obviously need
22 sometime to send it out, so I will give you until --
23 we'll calculate from the 18th, forty-five days. So that
24 takes us to the beginning of February. So let's have the
25 opt-in period end February 1st.

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1 So let's have our next conference sometime
2 after that.

3 MR. LEON: Your Honor, I apologize.

4 THE COURT: Yea.

5 MR. LEON: Do you believe that for the first
6 date, December 8th, we can get just a few days more?
7 Only because I'm just thinking about the Arabic portion
8 of it, about getting that translated.

9 THE COURT: All right. Then I'll give you
10 until December 11th.

11 MR. LEON: Thank you.

12 THE COURT: And I'll extend the opt-in period
13 to February 5th. So let's have our next status
14 conference on February 18th -- February 16 will the next
15 status conference at 11 o'clock. I very much hope but I
16 am not going to compel this because I don't know what the
17 plaintiff's medical condition is but I very much hope by
18 then that will be -- the deposition will be done because
19 then we could move forward.

20 MR. LEON: You're referring to February 16th.

21 THE COURT: February 16th.

22 MR. LEON: Correct.

23 THE COURT: Yes.

24 MR. LEON: Yes, your Honor. That is our main
25 goal.

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1 THE COURT: Okay, great. So good luck. Thank
2 you.

3 MR. FORMAN: Thank you.

4 THE COURT: Mr. Leon, you did fine.

5 MR. LEON: Thank you. I apologize, your Honor.

6 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 16th day of December, 2015.


Linda Ferrara

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